IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1502 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAXMIBEN WD/O ISHWARBHAI GANDABHAI & 3 - Petitioner(s)
Versus
ZAVERBHAI VITTHALBHAI PATEL & 3 - Respondent(s)

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Appearance :

MRS KETTY A MEHTA for Petitioner(s) : 1 - 4.
M/S THAKKAR ASSOC. for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2 – 4.

MR SATYAM CHHAYA, AGP for Respondents No.2-4

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 07/03/2007

ORAL JUDGMENT

1. The short facts of the case are that the petitioners are the legal heirs of the deceased

Ishwarbhai Gandabhai, who was holding the agricultural land bearing Survey No.462 admeasuring 0 acre and 29 gunthas. It appears that as per Dhoran Pardi Seva Sahkari Mandali Limited (hereinafter referred to as “the Society”) some amount was outstanding from Ishwarbhai, which was not paid and, therefore, recovery certificate was obtained and the land in question was auctioned by the Special Recovery Officer and the respondent No.1 purchased the said land at the auction. Based on the auction, as per Respondent No.1, the sale certificate was issued and the entry was mutated in the revenue record being No.1316 dated 30.6.1977. It appears that after the death of Ishwabhai, the petitioners made application to the Assistant Collector against the auction held and the entry proceedings and the said application was treated as Revision No.13 of 1992 by the Assistant Collector, who ultimately passed the order on 26.4.1992, whereby the entry was cancelled and on the aspects of breach of the provisions of Bombay Prevention and

Fragmentation Act, the matter was referred to the concerned authority. The respondent No.1 preferred revision before the Collector and vide order dated 30.3.1993, the revision was dismissed. The respondent No.1 further carried the matter in revision before the State Government and the State Government, vide order dated 16.12.1995 allowed the revision and set aside the order of the Assistant Collector and of the Collector and it is under these circumstances, the petitioners have approached this Court by the present petition.

2. Heard Ms.Mehta, learned Counsel for the petitioners, Ms.Pahwa, learned Counsel for respondent No.1, and Mr.Chhaya, learned AGP for respondents No.2, 3, and 4.

3. The learned Counsel for the petitioners has raised the contentions that if the auction was conducted without giving notice to the deceased Ishwarbhai, the same would be illegal and if the auction is to result into the breach of the provisions of the Fragmentation Act, the auction would also be illegal. She submitted that on

both the occasions, the Assistant Collector as well as Collector has rightly exercised the power and the State Government ought not to have interfered with by allowing the revision. She, therefore, submitted that the order passed by the State Government may be quashed and set aside. In furtherance to her submissions, she relied upon the decision of this Court in case of **"Brahmbhatt Ambalal Ashabhai & Ors. v. Special Secretary Revenue Dept. & Ors.", reported in 1983(2) GLR, 1091** for contending that if the transfer is to result into fragment and consequently breach of the provisions of the Fragmentation Act, the restoration of possession to the original holder of the land, is consequential.

4. On behalf of respondent No.1, it has been submitted by Mrs.Pahwa, learned Counsel that the deceased Ishwarbhai is party to the proceedings of the auction and she further submitted that the dispute came to be raised after a period of about 14 years, which was barred by delay. She also submitted that if the deceased Ishwarbhai

has taken benefit of the auction proceedings, in view of the decision of this Court in case of **"Patel Ratilal Maganbhai & Ors. v. State of Gujarat and Ors.", reported in 2003(1) GLR, 562** read with the decision of this Court in case of **Prahlad v. Vithalbhai" decided on 18.3.2005 in SCA No.4647 of 2005,** the deceased Ishwarbhai or the legal heirs of the deceased Ishwarbhai are not entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India and the only remedy is to prefer Civil Suit as per the decision of the Division Bench of this Court in case of **Patel Retialal Maganbhai & Ors.** (supra), even if the contention is that the transfer was in breach of the provisions of the Fragmentation Act and, therefore, it has been submitted that the revisional powers are rightly exercised by the State Government.

5. Mr.Chhaya, learned AGP has supported the order passed by the State Government.

6. It appears that it is not in dispute that the petitioners have preferred Civil Suit No.480 of

1982 for recovering the possession of the land in question and both the authorities namely; Collector as well as State Government have passed the order, observing that the rights of the parties shall be finalised as per the decision, which may be taken by the Civil Court in the said suit proceedings. It appears that the proceedings before the Assistant Collector as well as before the Collector and before the State Government were pertaining to the legality and validity of the entry No.1316. It is by now settled that the entry neither confers any rights in the property, nor it alters the rights, if otherwise in existence as per the provisions of the Transfer of Properties Act and relevant Laws. When the petitioners have preferred civil suit No.480 of 1982 and the Civil Court is to decide the matter independently on the basis of the evidence, as may be available before it, no useful purpose would be served in examining the questions, which are raised in the entry proceedings. Either party can get the questions adjudicated,

including on the aspects of legality and validity of the auction, consequential transfer, consequential effect of the transfer on account of the transfer, including the aspects as to whether there is any breach of the provisions of the Fragmentation Act or not. As such, whether Ishwarbhai had conscious knowledge at the time when the auction was conducted or any notice was given or subsequently by his own conduct the auction was within his knowledge and there was delay etc., all such aspects are to be examined and decided in the civil suit proceedings. Therefore, when the civil suit is pending and the rights of the parties are to be adjudicated in the civil suit and the Civil Court is to take independent view of the matter, it would not be a case to conclude various questions, which are raised in this petition and the reason being that it would prejudice the rights of either side in the proceedings before the Civil Court.

7. Mrs.Mehta, learned Counsel appearing for the petitioners, lastly submitted that if the entry is allowed to remain in the revenue record,

without there being any clarification regarding the proceedings of the Civil Suit, the rights of the petitioners may be put to jeopardy, whereas Mrs.Pahwa, learned Counsel for respondent No.1 contended that even the State Government has observed that ultimately the rights of the parties shall be finalized as per the decision in the Civil Court. Therefore, considering the facts and circumstances and more particularly in view of the decision of this Court in case of **Jhaverbhai Savjibhai Patel through P.O.A. Holder Ashok J.Patel v. Kanchaben Nathubhai Patel and Ors.", reported 2005(3) GLR, 2233**, if the entry in question is allowed to remain in revenue record with the clarification that the civil suit is pending and the rights of the parties shall be finalised as per the decision of the Civil Court, no prejudice will be caused to either side.

8. Under the above circumstances, the impugned order passed by the State Government so far as maintaining the Entry No.1316 is not interfered with on the ground that the Civil Suit No.480 of

1982 is pending before the Civil Court and both the sides namely; the petitioners as well as the respondents may agitate the questions, which are raised in this petition. However, while maintaining the Entry No.1316, subject to the aforesaid observation, it is directed that the entry shall remain in the revenue record with the clarification that pertaining to the land in question Civil Suit No.480 of 1982 is pending in the Court of Civil Judge, Paldi and the rights of the parties shall be finalized as per the decision, which may be of the Civil Court in the said suit. It is clarified that both the sides shall be at liberty to agitate the questions, which are raised in this petition on the aspects of legality and validity of the auction and others and the Civil Court shall be at liberty to take independent view of the matter.

9. Mrs.Pahwa submitted that now the proceedings under the Fragmentation Act are concluded or notice is withdrawn. In any way, the said contention may also be raised by the respondent No.1 in the civil suit proceedings.

10.The petition is partly allowed to the aforesaid extent. Rule made partly absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

7.3.2007 **(Jayant Patel, J.)**

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